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1953

SEP 03 1998

June 9

CONCORD, N.H.

Robert J. Jewell, Secretary,  
Employees' Retirement System  
Room 120, State House Annex,  
Concord, New Hampshire

Dear Mr. Jewell:

You have advised that on March 24, 1951, the school district of Bethlehem voted to approve the inclusion of its officers and employees, other than those eligible in the teachers' retirement system, in the employees' retirement system of the State of New Hampshire.

You further advise that your Department first learned of this decision of the Bethlehem school district on or about November 24, 1951, at which time forms for enrollment were forwarded to the district and that thereafter nothing else has happened, and now they have an employee, a custodian, who presumably desires to be included under OASI under the provisions of Laws of 1951, c. 294.

You are advised that by this March 24, 1951 vote, the district has precluded its employees from being covered by OASI. The fact that the employee himself had made no election is not significant. The choice of a retirement system was made for him by the vote.

With reference to the second question, namely, - whether the school district may by vote resign from membership in the State employees' retirement system and authorize its employees to become covered under OASI instead. Laws of 1951, c. 294, providing for the coverage of certain officers and employees of state and local governments under the Old Age and Survivors Insurance provisions of Title II of the Federal Social Security Act as amended, excludes from employment for purposes of that act "service performed by . . . those eligible to be members of the state employees' retirement system, . . ."

Robert J. Sewall, Secretary

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The Bethelton school district in my opinion has made an irrevocable decision and it would appear that it has no alternative but to implement its vote by whatever action is now appropriate under the State employees' retirement system if it has employees who wish to participate who were employees at the time of the passage of the act. The provisions of Laws of 1945, c. 201, s. 6, IV, relating to employees who are "unable" to make the required contributions contemplate a mere failure to appropriate or to collect funds under the granted authority.

Without express legislative sanction, the decision made to be included under the employees' retirement system cannot now be rescinded by the school district.

It therefore appears appropriate for the board of trustees to cause to be performed such duties as are required of the employer as authorized by Laws of 1945, c. 201, s. 4, III.

Very truly yours,

George F. Nelson  
Assistant Attorney General

CUN:HP



C O P Y

The Honorable Hugh Gregg -- 3.

fund for the reason that the legislation applicable to the said fund during the present biennium differs materially from that applicable to the previous biennium by eliminating authorization for the employment of temporary personnel.

Thus, many practical factors as well as legal conclusions appear to indicate that the spirit and intention of R. L. c. 233 was to confer upon the Governor the authority to charge funds not otherwise appropriated for the purpose of reimbursing towns under the statutory formula.

If you desire any of the foregoing questions to be certified to the Supreme Court we will prepare them for you for this purpose.

Respectfully,

Louis C. Wyman  
Attorney General

W/a